

**STATEMENT OF STEWART HARRIS
BEFORE THE
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES
ON
THE AUDIO FLAG**

June 27, 2006

Chairman Upton, Representative Markey, Representative Ferguson, and Members of the Subcommittee, thank you very much for having me here today to speak on the issue of protecting the value of the songs I write -- my property -- when it is broadcast over a digital radio service that enables a consumer to keep it without buying it.

First of all, let me say that I love the fact that new technologies exist that will allow consumers to listen to my music in different ways on different platforms. But please excuse me if I insist on being paid for it even if it is consumed in a new and different way.

I have been fortunate enough to write several #1 songs recorded by some of the biggest artists. But getting there was not easy. And the number of talented young songwriters who choose to dedicate their lives to bringing their gifts to American consumers will decrease even more than it already has with the problem of massive piracy on the Internet if they do not get paid as the delivery of music evolves.

Choosing to be a professional songwriter is a risky business. As a professional songwriter you are your own small business -- in fact the smallest. You pay your own health insurance and your own retirement. There is no "flex plan." What you get to live on are royalties from the use of what you create. From your property. When I write a

song, I get a royalty when it is performed, or broadcast over radio. I also get royalties when a consumer keeps a copy of it. Different uses of my songs deserve separate payments. When you go see a concert you pay to listen to that performance. And when you buy a download you pay to keep that song. But you don't go to iTunes and demand a song for free because you listened to it on the radio or at a concert. Consumers get the difference. Digital radio services should get the difference too.

We are here today because certain digital radio services do not want to pay me when they offer a service that allows a consumer to keep my song instead of having to buy it.

By allowing listeners to record broadcasts and build up entire jukeboxes of music on portable devices, radio services are becoming download services – but without paying the download license.

I'm not talking about casual recording off the radio. Certainly, we've all done that and I have no interest in seeing that disappear. I love it when someone runs to the radio to record one of my songs that has come on. But imagine my frustration when XM offers a service that allows someone to get an entire collection of my works, automatically recorded, labeled, sorted, and transferred to them in pristine permanent and portable digital copies without seeing a cent from a sale in return. This is not radio; this is Napster, Rhapsody, Yahoo!, or any one of the number of other digital music subscription services that pay the appropriate license for this type of distribution. Those are the services we need to make the sales we need to survive. But those services can not compete with others that offer the exact same functionality without paying the same license.

This is a matter of fairness – to other broadcasters, to download services, and to all of us making the music for those services. This is a matter of treating platforms that offer the same services equally.

I applaud Representative Ferguson for introducing the Audio Broadcast Flag Licensing Act, that will allow consumers to continue taping of the radio, but prevent the automatic “collecting” of my songs with no payment to me. You are directly affecting my livelihood with this bill and for that I am extremely grateful.

Seems to me that if digital radio services can pay market rates for their technology and equipment, they can do the same for my music. After all, without songwriters to write the songs, what is there to deliver over all that technology?

I always explain it this way: suppose I was a general contractor and you provided me with all of the bricks I needed to build my project, and then when it came time to pay I said thanks and handed you back your invoice. You would probably punch me in the nose. While I promise there will be no punching here today, I hope you understand how I feel. I am not a lawyer like these other guys at the table. I’m just a songwriter. And all I ask is that when the lawyers for the radio services sitting here get their paychecks, they urge their companies to reward me for my work, too.

On behalf of everyone in the music community, I hope you will support this bill and secure for all songwriters a bright digital future.

Thank you.